

EXHIBIT 23

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

Civil Action
No. 09-11672-WGY

TUCKERBROOK ALTERNATIVE
INVESTMENTS L.P.

Plaintiff,

SUMANTA BANERJEE,

Defendant.

* STATUS CONFERENCE

BEFORE: The Honorable William G. Young,
District Judge

APPEARANCES:

O'CONNOR, CARNATHAN and MACK LLC (By Sean T. Carnathan, Esq.), 1 Van de Graaff Drive, Suite 104, Burlington, Massachusetts 01803, on behalf of the Plaintiff

SUMANTA BANERJEE, Pro Se, 23 Soundview Farm
Road, Weston, Connecticut 06883

1 Courthouse Way
Boston, Massachusetts

June 27, 2012



1 **THE CLERK:** All rise. The United States District
2 Court is now in session, you may be seated.

3 Now hearing Civil Matter 09-11672, Tuckerbrook
4 Alternative Investments LP v. Banerjee.

5 Will counsel and parties please identify
6 themselves.

7 **MR. CARNATHAN:** Good afternoon, your Honor. Sean
8 Carnathan for the plaintiff, Tuckerbrook Alternative
9 Investments.

10 **MRS. BANERJEE:** Akshita Banerjee and Sumanta
11 Banerjee.

12 **THE COURT:** Let me -- are you both sued?

13 **MRS. BANERJEE:** No, just my husband's sued..

14 **THE COURT:** Well, Mrs. Banerjee, you are welcome,
15 but under our rules of procedure only your husband, who's
16 the party, may speak.

17 **MRS. BANERJEE:** Okay, thank you.

18 **THE COURT:** But you are welcome and you may stay
19 right there --

20 **MRS. BANERJEE:** Thank you.

21 **THE COURT:** -- where you're seated.

22 I do want to recognize, and respectfully, the
23 presence of two judges from Japan who are here watching our
24 proceedings, and we welcome them to this Court.

25 All right. Let me start by hearing plaintiff's

1 counsel. This is a status conference and why don't you
2 explain the status.

3 **MR. CARNATHAN:** Thank you, your Honor.

4 We are back before your Honor after a failed
5 settlement attempt. We actually had reached an agreement to
6 resolve the dispute.

7 **THE COURT:** Well, it's more than an attempt. I
8 mean, you reported the case settled.

9 **MR. CARNATHAN:** Correct, your Honor. An important
10 material term of the settlement was that Mr. Banerjee appear
11 for his deposition and testify truthfully at that
12 deposition. We've been trying to secure his testimony for,
13 I want to say about three years now. We have some related
14 battles going on currently in Connecticut.

15 At Mr. Banerjee's deposition, we did not believe
16 that he was truthful. One of the terms of the settlement
17 was that if we did not believe he was truthful we could
18 challenge his truthfulness and submit it to a neutral
19 arbitrator. We did just that. And the Honorable Margaret
20 Hinkle of JAMS reviewed his testimony and determined that he
21 was untruthful.

22 **THE COURT:** I've read your, I've read the
23 submission. But thank you. I asked you to give me the
24 status and you are. But what is it that you want this Court
25 to do having now reported this case settled?

1 **MR. CARNATHAN:** Well, I believe that we were
2 entitled to reopen the matter for good cause shown.

3 **THE COURT:** What gives you that belief?

4 **MR. CARNATHAN:** I believe that was your Honor's
5 order. At the time of the report you had dismissed the
6 matter without prejudice to reopening upon good cause shown.

7 **THE COURT:** Well, that's true, but then you
8 reported it settled.

9 You see, my problem is this. I take that report of
10 settlement extremely seriously and in my mind that shifts
11 the relationship between the parties. It appears having
12 reported the case settled and gotten various advantages from
13 that report neither side had to incur any additional costs,
14 appear at the Court's docket, and I moved on to other
15 matters.

16 Now, I think I'm entitled, and indeed I warned the
17 parties about reporting it settled if it were not, to view
18 the relationship of the parties now as a contractual one.
19 And at least based upon what you tell me the contract has
20 been fulfilled. He was required -- well, perhaps not. He
21 was required to appear for his deposition. He did. He was
22 required to testify truthfully. Tuckerbrook says he did
23 not. The settlement agreement provides what will happen
24 then. The matter will be submitted to a neutral arbitrator.
25 It was.

1 **MR. CARNATHAN:** Correct, your Honor.

2 **THE COURT:** That arbitrator has rendered her
3 decision.

4 **MR. CARNATHAN:** Correct.

5 **THE COURT:** A distinguished justice of the
6 Massachusetts Superior Court, Margaret Hinkle, and she has
7 concluded that Mr. Banerjee did not testify truthfully.

8 And so, what?

9 **MR. CARNATHAN:** Well, as a consequence of that
10 declaration, your Honor, the arbitrator has also declared
11 the settlement null and void. So Mr. Banerjee has in effect
12 breached the settlement agreement thus entitling us to
13 proceed with our claims.

14 **THE COURT:** What gave the arbitrator the power --
15 well, that means that it's -- so you have whatever rights
16 you have against Mr. Banerjee, and go ahead and exercise
17 them. But I don't have a case before me on which there is a
18 controversy, it seems to me, and I'm limited by the
19 constitution to cases or controversies.

20 **MR. CARNATHAN:** Well, the terms of the settlement
21 agreement expressly provide, your Honor, that upon a
22 declaration that Mr. Banerjee failed to testify truthfully
23 our claims are not released and we're entitled to proceed
24 with them.

25 **THE COURT:** Fine.

1 **MR. CARNATHAN:** So we're proposing to proceed with
2 them, your Honor.

3 **THE COURT:** Very well. File a complaint, say it's
4 related to the earlier action, and it will be drawn to me
5 and we will start again. But the next time don't report
6 things settled when in fact they are not settled. If you
7 now have the right to proceed against the Banerjees, and you
8 say you have that contractual right, I'm not closing the
9 courtroom doors to you. But I won't have parties play ducks
10 and drakes with the docket of this Court. I schedule things
11 on a progression to a final trial. If I had a trial, I know
12 how to do post-trial relief. This case was reported
13 settled. Settlements are much to be encouraged. If now
14 this settlement has gone -- and I don't impugn anything you
15 say, sir. All I'm saying is you have to start again. Start
16 an action. We'll let them defend it. I'll put it on for a
17 prompt trial because I'm not, I don't want to waste anyone's
18 time and expense. I'll get it to trial very rapidly,
19 believe me. But I need a new case. A case on which
20 properly I can act.

21 So, Mr. Banerjee, do you have anything to say?

22 **MR. BANERJEE:** Your Honor, one of the conditions of
23 the settlement was that they got my testimony in a
24 deposition. I came from India to give that testimony and I
25 gave that testimony truthfully. And the Honorable Justice

1 Hinkle didn't apply, she applied some contradiction stuff
2 and not the perjury standards. And I testified absolutely
3 truthfully. And they are entitled to their views. And I'm
4 happy to settle. I want this thing settled. There's
5 nothing in this. They just want information from me for
6 another case.

7 **THE COURT:** It sounds like, that sounds right to
8 me. But be that as it may, your rights are contract rights.

9 **MR. BANERJEE:** Yes.

10 **THE COURT:** If they bring now their original action
11 again --

12 **MR. BANERJEE:** Right.

13 **THE COURT:** -- saying that the settlement by its
14 terms is now null and void and that entitles them to bring
15 their action, you may attack their action --

16 **MR. BANERJEE:** Uh-huh.

17 **THE COURT:** -- by saying that action is all over
18 and in fact I have fully complied with whatever the
19 settlement was. I express no opinion on any of that.

20 **MR. BANERJEE:** Right. Thank you, your Honor.

21 **THE COURT:** But I have no basis to.

22 **MR. BANERJEE:** Right. Right.

23 **THE COURT:** But that doesn't mean I will so
24 conclude --

25 **MR. BANERJEE:** Yes.

1 **THE COURT:** -- or that they can't go forward.

2 **MR. BANERJEE:** Absolutely.

3 **THE COURT:** I, I am here to give people their
4 rights according to law. The only -- if anyone has slipped
5 a stitch here, it's only that before things were clear
6 someone reported to me the case was settled. That's very
7 serious business. And for very good reason. Because the
8 Court's time is limited. I went on to other cases.

9 **MR. BANERJEE:** Right.

10 **THE COURT:** Other people say they want trials. I'm
11 here to give trials. I have been engaged with those other
12 people.

13 **MR. BANERJEE:** Right.

14 **THE COURT:** And all I'm saying, really to you both,
15 you can't come back now. Maybe they can start again.
16 Maybe. We'll see. You have all the defenses that you
17 originally had, and of course I don't know, I've just --
18 this is the first time I've met you. Before I saw
19 attorneys.

20 **MR. BANERJEE:** Right.

21 **THE COURT:** And I was trying to get the dispute
22 ready for trial.

23 **MR. BANERJEE:** Right.

24 **THE COURT:** Then I was told it's over, the parties
25 have agreed. Now, that's much to be preferred. If you

1 seriously want to settle. These things are expensive. No
2 one would be happier if in fact you settled. But I have
3 nothing before me, so I'll take no action. But Tuckerbrook
4 has every right at least to allege that they now have a
5 right to substantive relief. And the relief that they
6 originally wanted was a lot more than just getting your
7 deposition. They may have settled for that, but they're not
8 going to sit still for that now. Now they're going to come
9 back and they say they want something more. I don't know
10 because we haven't had the taking of actual evidence, the
11 way cases should be resolved.

12 **MR. BANERJEE:** Right.

13 **THE COURT:** Are there any questions?

14 **MR. CARNATHAN:** Well, your Honor, before we
15 conclude, may I respectfully suggest that perhaps another
16 way to approach this, given that your Honor has already
17 granted our motion to reopen and is here today to hear us,
18 perhaps we could proceed with this action and amend our
19 complaint. Your Honor may recall we had some substantial
20 difficulties serving Mr. Banerjee. It's not as easy as
21 restarting the matter as one might like.

22 **THE COURT:** I understand. Now that I've heard you,
23 I think I was improvident. You reported the case settled.
24 Now, he's here, physically. Maybe -- I'll ask him this.

25 You have no problem, since you're physically

1 present, and indeed you were residing in Connecticut, I
2 understand.

3 MR. BANERJEE: Well, we have a house in India and
4 in Connecticut.

5 THE COURT: Right. But you'll accept service?

6 MR. BANERJEE: Now?

7 THE COURT: Yes, on a renewed complaint.

8 MR. BANERJEE: Yes. I mean, sure.

9 THE COURT: All right. They'll serve you in the
10 ordinary course at your home in Connecticut. I will deem
11 that sufficient.

12 Is that all right?

13 MR. BANERJEE: Yes, that's fine.

14 THE COURT: Satisfied?

15 MR. CARNATHAN: Thank you, your Honor.

16 THE COURT: All right. Thank you both. We'll
17 recess.

18 THE CLERK: All rise.

19 (Whereupon the matter concluded.)

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C E R T I F I C A T E

I, Donald E. Womack, Official Court Reporter for the United States District Court for the District of Massachusetts, do hereby certify that the foregoing pages are a true and accurate transcription of my shorthand notes taken in the aforementioned matter to the best of my skill and ability.

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